

ICRC

Texas Open Meetings Act August 18, 2021



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• WHAT IT IS:

TOMA is a statute (enacted to benefit the public rather than governing bodies) that mandates open public access to all non-excepted meetings of governmental bodies.

• WHERE IT IS:

Codified in Texas Government Code, Chapter 551.





WHAT IT SAYS:

Requires that every meeting of a subject body, with certain narrow enumerated exceptions, be

- open to the public, and
- posted as to notice of time, place, and subject matter of items to be discussed, and
- memorialized with a record.



Open to the Public:

- Must allow each member of the public who desires to speak to do so during or before consideration of an item
- May adopt reasonable rules
- Cannot prohibit public criticism



Meeting Notice (Agenda):

Must be posted

- Minimum of 72 hour notice
- posted as to notice of time, place, and subject matter of items to be discussed, and
- memorialized with a record (Standard practice: audio or video recording and minutes reflecting members attendance and action taken).



What is a QUORUM?

• **DEFINITION**:

TOMA = Allows the City Charter to set the number for a quorum.

Charter = For the ICRC, a quorum is 9 members.

POSTING REQUIRED:

If a quorum is going to be present at anything other than a purely social or ceremonial function, a meeting notice must be posted.





What is a MEETING?

• **DEFINITION**:

A verbal exchange among a quorum of the body ...

 "verbal" also means "non-verbal" texts or emails or interactions.

... or between a member of the public, or staff, and a quorum of the body ...

... during which at least one member of the body is participating in a deliberation of public business over which the body has had, has, or will have control.





Meeting? Maybe, if social turns to business.







CLOSED MEETING/EXECUTIVE SESSION

- Convene in Open Session
- Announce Executive Session and Applicable Section(s) of TOMA
- Very Specific List of Allowable executive sessions



Exceptions (Most Common)

- 551.071 Consultation with Attorney
- 551.074 Personnel Issues posting should identify high-level personnel
- 551.076 Deliberation Regarding Security Devices or Security Audits

"Walking Quorum"

Prohibited Series of Communications: A member of a governmental body commits an offense if the member:

- knowingly engages in at least one communication among a series of communications that each occur outside of a public meeting; and
- that concern an issue within the jurisdiction of the governmental body; and
- the members engaging in the individual communications constitute fewer than a quorum, but the members engaging in the series of communications constitute a quorum; and

Walking Quorum

- Knowing Conduct Required:
- The member knew at the time the member engaged in the communication that the series of communications:
 - involved or would involve a quorum;
 and
 - would constitute a deliberation once a quorum of members engaged in the series of communications.



Walking Quorum

- A quorum does not have to be in the same place at the same time. Sequential contacts, and cumulative contacts, can add up to a quorum.
- Communications on social media could constitute a walking quorum
- Complaints alleging walking quorums are prosecuted by county attorneys, district attorneys, and criminal district attorneys, and the AG can assist in criminal prosecution.





How to Avoid Walking Quorum

- Stay aware of with whom you have discussed commission business.
- Remember that social media is subject to walking quorum considerations.
- Keep quorum discussion and decision making entirely within posted meetings.
- Use your Working Groups





Penalties for TOMA Violations

- Actions of the body can be voided, via lawsuit.
- Lawsuits can be brought to force compliance.
- Attorneys fees can be assessed.
- Calling, or aiding in calling, or participating in a meeting in violation of TOMA carries Class C misdemeanor penalties.



TOMA and PIA Training

- Texas Government Code §551.005 sets forth requirements for certain public officials for training.
 - The Texas Attorney General's Office (OAG) provides free video training courses that comply with this requirement.
 - Link: https://www.texasattorneygeneral.gov/og/open-government-training
 - An online Course Completion Certificate is available at the OAG website, and can be filed with the City Clerk.

Other Resources

- AG's Open Meetings Handbook: https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/openmeetings-hb.pdf
- AG's PIA Handbook: <u>https://www.texasattorneygeneral.gov/sites/default/files/files/divisions/open-government/publicinfoleh.pdf</u>
- TML's TOMA Made Easy:
 https://www.tml.org/DocumentCenter/View/1332/The-Texas-Open-Meetings-Act-Made-Easy-2019--Final
- TML's PIA Made Easy: <u>https://www.tml.org/DocumentCenter/View/1834/Texas-Public-Information-Act-Made-Easy---2020-PDF</u>

Questions?

Direct any questions to ICRC Outside Counsel,
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